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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 636.

JAMES WALTER CARTER, *Petitioner,*

v.

CARTER COAL CO., ET AL., *Respondents.*

No. 649.

R. C. TWAY COAL CO., *Petitioner,*

v.

GLENN, COLLECTOR OF INTERNAL REVENUE, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

Brief for the State of New Mexico as Amicus Curiae in Support of the Constitutionality of the Bituminous Coal Conservation Act of 1935.

(GUFFEY COAL ACT)

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PRELIMINARY STATEMENT.

The State of New Mexico files this brief as *amicus curiae* in support of the constitutionality of the Bituminous Coal Conservation Act of 1935, involved in the present cases.

This proceeding is of vital interest and concern to the

State of New Mexico in that its outcome will depend to a great degree whether the coal industry shall be rehabilitated and stabilized and placed upon a stable and firm foundation, or whether it shall be permitted to be destroyed to the ruination of both coal operators and labor alike.

New Mexico is an important bituminous coal producing State and the deplorable condition of the industry since 1924 has reacted with great force in the State. Since that year there has been a great shrinkage in production and in our belief many of the drastic declines were in a large part the result of unregulated and unrestricted cut-throat competition between coal producing regions and individual and independent coal producers, and the primary purpose of the bituminous coal conservation act is to eliminate this type of competition in the industry.

The Act attempts to provide the machinery for fixing minimum prices based on average cost of production, and also attempts to fix maximum prices where necessary to protect consumers by making unlawful certain unfair methods of competition and by regulations which have reference to collective bargaining, to minimum wages and to maximum hours of employment.

It was shown that under the operation of the old NRA bituminous coal code that elimination of unfair methods might reasonably be expected to bring about a stabilization of the industry, which would result in substantial and material benefits to the coal producing states.

The State of New Mexico is primarily interested in the constitutionality of the Act, because the coal industry is vital to the public welfare of the State, and its citizens and the State itself is practically and legally incompetent to bring about such stabilization within the limits of its own borders. We know that such stabilization can only be had by some type of Federal legislation, and we believe the present Coal Conservation Act meets this purpose.

ARGUMENT.

I. The States are Legally and Practically Incompetent to Regulate the Price at Which Bituminous Coal is to be Sold and the Federal Government Possesses Power to Regulate These Prices Under the Commerce Clause of the United States Constitution.

A great percentage of the coal produced in New Mexico is shipped to other states, and under the decisions of this Court, New Mexico could not legally and under the Constitution of the United States establish minimum or maximum prices for such coal for the reason that to do so would constitute a burden on interstate commerce. *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 50; *Shafer* v. *Farmers' Grain Co.*, 268 U. S. 180.

Also the price of coal which is produced in other states and which is shipped into New Mexico could not be controlled by the latter. *Baldwin* v. *Seelig*, 294 U. S. 511.

Therefore, as regards sales in interstate commerce, the power to regulate prices must be in the hands of the Federal Government since the States under the Commerce Clause of the Federal Constitution have been deprived of such power. This is shown by the holding in *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 50, where the Court, after holding that a State statute attempting to fix the price at which grain could be sold to elevator operators, said: "Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed".

New Mexico cannot legally regulate the prices of coal sold in interstate commerce and it would be detrimental to the industry for it to make any attempt whatsoever to regulate the prices of intrastate sales, and such attempt would mean that coal from other states would come into New Mexico and destroy the business of New Mexico producers.

If Congress has the power to regulate the price of coal sold in interstate commerce, it appears that it also has the

power to regulate the prices of sales in intrastate commerce. *Shreveport Case,* 234 U. S. 342; *Colorado* v. *United States,* 271 U. S. 153. Intrastate sales of coal are so connected and intermingled with interstate sales that it is impossible to regulate one without regulating the other.

For these reasons it follows that since New Mexico is not legally competent to control the prices of coal sold in interstate commerce, and practically incompetent to control the prices of coal sold in intrastate commerce, that the regulation of these matters by the Federal Government involves no invasion of the powers reserved to the various and several states under the Tenth Amendment to the Federal Constitution.

II. The States can not in Practice Regulate Labor Relations in the Bituminous Coal Industry, and the Federal Government May Regulate These Matters Under the Commerce Clause Since They Directly Affect Interstate Commerce in Bituminous Coal.

It is practically impossible for New Mexico or any other state, to maintain labor standards which are superior to those in competing States without destroying large proportions of its own mines.

The factor which has deprived the States of their ability to protect their citizens against competition from citizens in other States with lower labor standards, is the Commerce Clause of the Federal Constitution and if it were not for this Clause New Mexico could regulate or prohibit or impose a duty upon shipments into New Mexico of competing commodities. Because of this Clause such commodities may now move and pass freely into New Mexico. *Baldwin* v. *Seelig,* 294 U. S. 511.

Thus it is because coal moves in competition in interstate commerce and because the commerce clause prohibits the States from interfering in any way with this movement which makes it impossible for the State to take any mea-

sures to improve the conditions of its own mine workers and laborers.

If conditions of labor in other States have a bearing upon, or tend to control conditions of labor in New Mexico through the instrumentality of interstate competition, they must directly affect interstate competition itself, and to say that they affect interstate competition is but another way of saying that they directly affect and determine the course of the movement of coal in interstate commerce.

Many cases in this court, including *Schechter Poultry Corporation* v. *United States*, 295 U. S. 593, have held that the power of Congress extends to those intrastate Acts which directly affects interstate commerce, and it would seem anomalous if an element in the competitive situation which was strong enough and substantial enough to control the movement of coal in commerce and to prevent operators in any one State or the Government of that State itself from taking any action to protect its own industry and should be held not to have a direct effect upon interstate commerce.

Perhaps it will be urged by counsel that Congress has not the power to regulate labor relations in the coal industry, because such regulation falls within the scope of action reserved to the States by the Tenth Amendment, but such argument either overlooks or attempts to conceal the obvious facts which stand in the way of any effort by any single State to control labor relations in the coal industry.

The State dare not exercise its power over wages or hours or the right to collective bargaining in the bituminous coal industry. It will not be deprived of any power which has any reality or substance if such power is held to be vested in Congress.

It is the commerce clause itself, of the Constitution, which prohibits interference with interstate trade, which has destroyed the power of the State in this respect.

To reserve to the States' powers which the Constitution

itself has operated to prevent them from exercising would be a vain and futile gesture.

If the Federal Government cannot exercise power over such matters, then there will be no agency of Government with power to assist the coal mining industry in any substantial or material way.

New Mexico does not desire the chaotic conditions which have prevailed in the coal industry during the last twenty years. The issue is not one of protecting northern states against southern states, but it is one of protecting all coal producing areas and none can take effective action without assurance that all of the others will do likewise and simultaneously.

We cannot for a moment believe that the main southern coal producing states, such as West Virginia and Kentucky, desire to return to the former conditions of the industry, for the history of the industry makes it clear that the states with low labor standards cannot for any appreciable length of time maintain their competitive advantage. The other states will soon reduce wages to meet such competition and all the states will then be engaged in a disastrous war of competition, which will bring the coal industry in each and all of them to ruination.

In presenting this brief it has not been our purpose to retrace any of the steps which will be so ably presented by the Attorney General of the United States touching the constitutionality of the Guffey Coal Bill, but rather it is our desire to make known to this Court the position of the State of New Mexico upon the question involved.

We believe that the Guffey Coal Bill is an outstanding and constructive piece of legislation. Its general plan of a National Commission for administration of a Code containing regulations fixed by Congress; the division of the coal fields into districts controlled by District Boards selected from among both the workers and operators; the requirement of submission of the orders of these Boards relating to establishment of production costs and prices

for approval to the National Commission; the guarantee of fair treatment of labor and all collective bargaining with settlement of disputes by a labor board created; the protection of the consumer against the possibility of exorbitant prices through a Consumers Council acting independently of any control of the Commission; the subliquidating feature of the plan; the enforcement of the regulations by means of "cease and desist" orders, subject to proper review by the Courts all make plain that this splendid piece of legislation is based on experiences of the people as well as an intimate knowledge of the needs which must be corrected.

For the foregoing reasons the State of New Mexico desires to urge that the Act be upheld as being one which points the only way out of a situation which is fraught with great peril, not only to the coal producing states of the Nation but to the entire Nation as well.

If the Federal Constitution is to continue, it cannot be interpreted to deny on the one hand, under the interstate commerce clause, the right of the States to relieve and protect distressed industries against ruinous competition from similar industries in other states because the subject matter may be interstate commerce, and then on the other hand interpreted in a different manner to deny Congress the right to regulate such industries in all the States because the subject matter has not been definitely shown to be interstate commerce.

In conclusion may we be permitted to say that in our opinion some form of Governmental regulation is indispensable, not only to save the industry but other disastrous consequences of the States involved as well as the Nation, and because of the great number of States concerned and their separation by geographical lines it is not practical for them to pursue any means of joint action and therefore action would be entirely ineffective.

Respectfully submitted,

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